

**VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY
DIVISION OF LABOR AND EMPLOYMENT LAW**

FIELD OPERATIONS MANUAL

**CHAPTER TWO
USE OF POLYGRAPHS IN CERTAIN EMPLOYMENT SITUATIONS**

This document is part of the latest version of the Virginia Department of Labor and Industry Division of Labor and Employment Law's Field Operations Manual. This document supersedes any and all previous editions.

Last Revised January 2000

2.00 Prohibition of Use of Polygraphs in Certain Employment Situations

A. Coverage

The Prohibition of Use of Polygraphs in Certain Employment Situations is set forth in § 40.1-51.4:4 of the Code of Virginia and applies to all law enforcement agencies of the Commonwealth.

B. Summary

This statute prohibits law enforcement agencies from requiring their employees to submit to a lie detector test, except the chief executive officer of a law enforcement agency may by written directive require an employee to submit to a lie detector test related to a particular administrative investigation concerning allegations of misconduct or criminal activity.

C. Definitions

1. “Lie detector test” means any test utilizing a polygraph or any other device, mechanism or instrument which is operated, or the results of which are used or interpreted by an examiner for the purpose of purporting to assist in or enable the detection of deception, the verification of truthfulness, or the rendering of a diagnostic opinion regarding the honesty of an individual.
2. “Law-enforcement agency” means an agency which employs persons with the power of arrest. The Departments with this authority are the State Police, the Capitol Police, the Virginia Marine Resources Commission, the Virginia Port Authority, the Department of Alcoholic Beverage Control, the Department of Motor Vehicles, the Police Departments of political subdivisions or campus police departments of public institutions of higher learning where that force or bureau has ten or more employees, and the Internal Affairs Division of the Department of Corrections.
3. “Administrative investigation” means an ongoing investigation involving allegations of misconduct or criminal activity such as theft, embezzlement, or misappropriation.

D. Exemption for Chief Executive Officer of the Law-enforcement Agency Conducting Investigations of Misconduct or Criminal Activity

The chief executive officer of the law-enforcement agency may only require an employee

to submit to a lie detector test if the following conditions are met:

1. The request is made in writing.
2. The test is administered in connection with an ongoing investigation involving misconduct or criminal activity.

For the ongoing exemption to apply, the investigation must be of a specific incident or activity. Thus, for example, the chief executive may not request that an employee or employees submit to a polygraph test in an effort to determine whether or not any thefts have occurred. Such random testing is specifically prohibited by this statute. Further, by limiting the exemption to a specific incident or activity, the chief executive is precluded from using the exemption in situations where the so-called ongoing investigation is continuous. For example, the fact that items in inventory are missing from the warehouse in a given month, this in and of itself, would not be a sufficient basis to meet the specific incident requirement without evidence of intentional wrongdoing. Administering a polygraph test in such circumstances, without identification of a specific incident or activity and a “reasonable suspicion that the employee was involved” would amount to little more than a fishing expedition.

3. The chief executive officer provides the employee with a written statement in a language easily understood which fully explains with particularity the specific incident or activity being investigated and the basis for testing particular employees which contains at a minimum:
 - (1) An identification with particularity of the specific misconduct or criminal activity.
 - (2) A statement specifically describing the employee's access to the property that is the subject of the investigation.
 - (3) A statement describing in detail the basis of the chief executive's reasonable suspicion that the employee was involved in the incident or activity under investigation.
4. The employer should maintain a copy of the statement for at least one year and have it available for inspection on the request of DOLI.

E. Case Assignment

1. Regional, Field, or Central Office staff person receives complaint. Complaint must be received within 90 days of the alleged violation.

2. The claimant should be requested to write a letter documenting all information relevant to the alleged violation such as a copy of the written directive issued by the chief executive officer; date the polygraph was administered, if applicable; all documentation surrounding the claimant's dismissal, demotion, etc.

F. Investigation

1. Interviews complainant.
2. Interviews employer (chief executive officer).
3. Interviews all persons having knowledge of the alleged misconduct or criminal activity under investigation.
4. Reviews written directive of chief executive officer.
5. Reviews agency's policy for handling employee misconduct and criminal activity.
6. Upon review of all facts, findings, testimonies, etc, Representative determines the validity of the complaint.

G. Informal Resolution

Representative will attempt informal resolution:

1. Discuss findings and determination with employer.
2. Inform employer:
 - (1) To cease and desist violations detected.
 - (2) In the case of discharge or demotion, immediately reinstate the employee(s) with back pay plus applicable interest.
 - (3) The Commissioner may issue an order compelling reinstatement and back pay with applicable interest.